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COMMERCE

17. At all times relevant to this complaint, Defendants have maintained a substantial course of trade in or affecting commerce, as “commerce” is defined in Section 4 of the FTC Act, 15 U.S.C. § 44 (2004).

DEFINITIONS

18. “**Electronic mail message**” (or “**email**”) “means a message sent to a unique electronic mail address.” 15 U.S.C. § 7702(6) (2004).

19. “**Electronic mail address**” “means a destination, commonly expressed as a string of characters, consisting of a unique user name or mailbox (commonly referred to as the “local part”) and a reference to an Internet domain (commonly referred to as the “domain part”), whether or not displayed, to which an electronic mail message can be sent or delivered.” 15 U.S.C. § 7702(5) (2004).

20. “**Commercial electronic mail message**” (or “**commercial email**”) “means any electronic mail message the primary purpose of which is the commercial advertisement or promotion of a commercial product or service (including content on an Internet website operated for a commercial purpose).” 15 U.S.C. § 7702(2) (A) (2004).

21. “**Header information**” “means the source, destination, and routing information attached to an electronic mail message, including the originating domain name and originating electronic mail address, and any other information that appears in the line identifying, or purporting to identify, a person initiating the message.” 15 U.S.C. § 7702(8) (2004).

22. “**Initiate**,” “when used with respect to a commercial email message, means to originate or transmit such message or to procure the origination or transmission of such message.” 15 U.S.C. § 7702(9) (2004).

23. “**Procure**,” “when used with respect to the initiation of a commercial email message, means intentionally to pay or provide other consideration to, or induce, another person to initiate such a message on one’s behalf.” 15 U.S.C. § 7702(12) (2004).

- 1 24. **“Protected computer”** means a computer which is used in interstate or foreign
2 commerce or communication, including a computer located outside the United States that
3 is used in a manner that affects interstate or foreign commerce or communication of the
4 United States. 15 U.S.C. § 7702(13) (2004); 18 U.S.C. § 1030(e)(2)(B) (2004).
- 5 25. **“Sender”** “when used with respect to a commercial electronic mail message, means a
6 person who initiates such a message and whose product, service, or Internet website is
7 advertised or promoted by the message.” 15 U.S.C. § 7702(16)(B) (2004).

8 **DEFENDANTS’ COURSE OF CONDUCT**

- 9 26. Since at least January 1, 2004, and continuing to the present, Defendants have initiated
10 the transmission of hundreds of thousands of commercial email messages. Defendants’
11 commercial email messages advertise a variety of products and services, including auto
12 warranties, pharmaceutical products, online college degree programs, and mortgage
13 services. The commercial email messages contain hyperlinks to websites operated by
14 Defendants that promote these various products and services.
- 15 27. In numerous instances, Defendants’ commercial email messages violate Section 5 of the
16 CAN-SPAM Act, 15 U.S.C. § 7704 (2004). The messages contain false header
17 information, fail to notify recipients of their opt-out rights, fail to include functioning opt-
18 out mechanisms, contain deceptive subject headings, fail to identify that they are
19 advertisements, and/or fail to include the sender’s valid postal address. In addition,
20 Defendants often continue to send commercial email to recipients even after the
21 recipients have requested not to receive any future commercial email messages from
22 Defendants.
- 23 28. Since March 2004, members of the public have forwarded to the FTC over 1,870,000
24 commercial email messages that advertise Defendants’ websites.
- 25 29. Since January 2004, California residents have forwarded to the California Attorney
26 General’s office over 1,000 commercial email messages that advertise Defendants’

1 websites.

2 30. Many of Defendants' commercial email messages promote mortgage services. These
3 messages contain hyperlinks to Defendants' websites, such as *www.myeasysavings.com*,
4 where consumers are asked to provide personal information to obtain information about
5 mortgage services. The websites state that consumers' personal information will then be
6 shared with multiple mortgage brokers and/or banks who will contact the consumers
7 regarding the mortgage services they offer.

8 31. Defendants in fact sell the information submitted by consumers on their mortgage
9 services websites to other companies, known as lead companies, including such lead
10 companies as Abacus Enterprises and Infinite Leads Marketing. The lead companies then
11 sell the information to other lead companies, such as The Loan Page, Inc., Huling, Inc.,
12 and others. In the end, these intermediary lead companies sell the information to
13 mortgage lenders and brokers, such as Indy Mac Bank, Ameriquest Mortgage Company,
14 BLS Funding, and Mortgage South, who then contact consumers to offer mortgage
15 services.

16 32. Abacus Enterprises, of El Cerrito, California, which is located in this District, purchased
17 approximately 69,000 leads from Defendants in 2004.

18 **Defendants Initiate Commercial Email Messages**

19 33. The primary purpose of Defendants' commercial email messages is the advertisement or
20 promotion of products or services, including content on Internet websites operated by
21 Defendants for commercial purposes.

22 34. Defendants are "initiators" with respect to an email message when they either originate or
23 transmit a message themselves or they procure the origination or transmission of a
24 message through payments or other consideration, or inducements, to their agents or
25 affiliates.

26 35. Defendants are "senders" with respect to an email message when they initiate a message

1 and it is Defendants' products, services, or websites that are being advertised or promoted
2 by such message.

3 **Defendants Use Deceptive Subject Headings**

4 36. In numerous instances, Defendants initiate commercial email messages that promote
5 mortgage services with subject headings that deceptively suggest that the recipients have
6 already submitted applications, have accounts, or have prior relationships with the sender.
7 Some examples of these subject headings include "About Your M[o]rtgage application,"
8 "Customer ID 54056," "Account info," or "Your Application Confirmation."

9 37. In numerous instances, recipients of Defendants' commercial email messages have not
10 already submitted applications, do not have accounts, and do not have prior relationships
11 with the sender.

12 **Defendants Fail to Identify Their Messages as Advertisements**

13 38. The text of numerous commercial email messages initiated by Defendants that promote
14 mortgage services fails to conspicuously identify the messages as advertisements or
15 solicitations. Rather, the content of many of these messages falsely suggests that the
16 recipients have already inquired about mortgage services, made some type of prior
17 contact, or have a prior relationship with the company.

18 39. For example, one of Defendants' email campaigns states in part:

19 Thank you for your m.ortgage [sic] application, which we received
20 yesterday. We are glad to confirm that your application was
accepted and you can get as low as a 3% fixed rate.

21 **Defendants Use False or Misleading Headers**

22 40. Commercial email messages initiated by Defendants contain header information,
23 including "from" and "reply-to" lines. The "from" line purports to identify who sent the
24 email message; the "reply-to" line identifies to whom a return email message will be sent
25 if the email recipient clicks on the "reply" button in the recipient's email software.

26 41. Defendants have initiated commercial email messages that contain false header

